IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4567 of 1999
With
SPECIAL CIVIL APPLICATION No. 4843 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMANBHAI ISHWARBHAI PATEL & 22 - Petitioner(s)

Versus

DISTRICT COLLECTOR MEHSANA & 1 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2 - 23.
RULE SERVED for Respondent(s) : 1,
MR MB PARIKH for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/12/2005

ORAL JUDGMENT

In these petitions, the petitioners have challenged the notice dated 24.2.99 issued by the Vijapur Nagarpalika calling upon the petitioners to remove the cabins

which according to the Nagarpalika encroach on the public road and cause hindrance to the traffic. It is the case of the petitioners that the cabins were alloted to the petitioners by the Nagarpalika itself. Document in this record was produced by the petitioners. It is also the case of the petitioners stated through learned advocate Shri Jani that the petitioners have not encroached on any public land despite which they are being asked to pull down the construction.

2. On the other hand, learned advocate Shri Parikh for the Nagarpalika submitted that prior to issuance of the impugned notice for removal of the construction, the Nagarpalika had issued a show cause notice dated 4th December 1998 calling upon the petitioners to supply necessary material with respect to the construction in question. Since the petitioners did not approach the Nagarpalika, the impugned notice came to be issued.

3. On the record, there is no material before this Court to verify that the petitioners have encroached on any public land. No material has been placed by the respondents to substantiate that the allegation that the petitioners have made such encroachment. Regarding grant of the cabins to the petitioners by the Nagarpalika, there is no dispute. While quashing the impugned notice dated 24.2.99, it is however kept open for the Nagarpalika to inquire into the encroachment and construction of the petitioners and after giving them an opportunity of being heard, if it is found that they have encroached on any public land or that the construction is not according to the rules, further action in accordance with law may be taken.

4. With the above directions, the petitions are disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)